

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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QUIRKY INCORPORATED, : Civil Action No.  
Plaintiff, : 1:14-cv-01603-PKC  
Counterclaim Defendant : ECF Case  
- against - : **JURY TRIAL DEMANDED**  
OXO INTERNATIONAL, LTD, :  
Defendant. :  
Counterclaim Plaintiff :  
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**ANSWER TO COUNTERCLAIMS**

Plaintiff and counterclaim defendant Quirky Incorporated (“Quirky”) by its undersigned attorneys, responds to the Counterclaims of OXO International, Ltd. (“OXO”) in OXO’s “Second Amended Answer to Second Amended Complaint, Affirmative Defenses, and Counterclaims” as follows:

**THE PARTIES**

1. Quirky is without knowledge or information sufficient to form a belief as to the truth of the allegations of counterclaim paragraph 1 and, on that basis, denies them.
2. Quirky admits the allegations of counterclaim paragraph 2.

**JURISDICTION AND VENUE**

3. Quirky admits the allegations of counterclaim paragraph 3.
4. Quirky admits the allegations of counterclaim paragraph 4.

5. Quirky admits the allegations of counterclaim paragraph 5.

**BACKGROUND**

6. Quirky admits the allegations of counterclaim paragraph 6.

**FIRST COUNTERCLAIM**

(Declaratory Judgment of Non-Infringement of the ‘459 Patent)

7. Quirky repeats and re-alleges paragraphs 1 – 6 hereof as if fully set forth herein.

8. Quirky denies the allegations of counterclaim paragraph 8.

9. Quirky admits the allegations of counterclaim paragraph 9.

10. Denied except that Quirky admits that OXO is seeking a judicial declaration of its rights and obligations regarding the ‘459 Patent.

**SECOND COUNTERCLAIM**

(Declaratory Judgment of Invalidity of the ‘459 Patent)

11. Quirky repeats and re-alleges paragraphs 1 – 10 hereof as if fully set forth herein.

12. Quirky denies the allegations of counterclaim paragraph 12.

13. Denied except that Quirky admits that on or about February 25, 2010 Bill Ward posted two videos on Quirky’s website under the file names “dustpan\_demo\_final.wmv” and “testDraft\_2\_compressed.mov” and that Bill Ward is a named inventor of the ‘459 patent.

14. Quirky denies the allegations of counterclaim paragraph 14.

15. Denied except that Quirky admits that Provisional Patent Application Serial No. 61/476,663 was filed on April 18, 2011.

16. Quirky admits that it did not disclose the video files “dustpan\_demo\_final.wmv” and “testDraft\_2\_compressed.mov” to the U.S. Patent and

Trademark Office (“USPTO”) during the prosecution of the application that issued as the ‘459 patent but further admits that during prosecution of this patent application it disclosed a still image from the video testDraft\_2\_compressed.mov to the USPTO and that the video files are cumulative to the still image.

17. Quirky denies the allegations of counterclaim paragraph 17.
18. Quirky admits the allegations of counterclaim 18.
19. Denied except that Quirky admits that OXO is seeking a judicial declaration of its rights and obligations regarding the ‘459 Patent.

**THIRD COUNTERCLAIM**

(Declaratory Judgment of Non-Infringement of the ‘243 Patent)

20. Quirky repeats and re-alleges paragraphs 1 – 19 hereof as if fully set forth herein.
21. Quirky denies the allegations of counterclaim paragraph 21.
22. Quirky admits the allegations of counterclaim paragraph 22.
23. Denied except that Quirky admits that OXO is seeking a judicial declaration of its rights and obligations regarding the ‘243 Patent.

**FOURTH COUNTERCLAIM**

(Declaratory Judgment of Invalidity of the ‘243 Patent)

24. Quirky repeats and re-alleges paragraphs 1 – 23 hereof as if fully set forth herein.
25. Quirky denies the allegations of counterclaim paragraph 25.

26. Denied except that Quirky admits that on or about February 25, 2010 Bill Ward posted two videos on Quirky's website under the file names "dustpan\_demo\_final.wmv" and "testDraft\_2\_compressed.mov" and that Bill Ward is a named inventor of the '243 patent.

27. Quirky denies the allegations of counterclaim paragraph 27.

28. Denied except that Quirky admits that Provisional Application Serial No. 61/476,663 was filed on April 18, 2011.

29. Quirky admits that it did not disclose the video files "dustpan\_demo\_final.wmv" and "testDraft\_2\_compressed.mov" to the U.S. Patent and Trademark Office ("USPTO") during the prosecution of the application that issued as the '243 patent but further admits that during prosecution of this patent application it disclosed a still image from the video testDraft\_2\_compressed.mov to the USPTO and that the video files are cumulative to the still image.

30. Quirky denies the allegations of counterclaim paragraph 30.

31. Quirky admits the allegations of counterclaim 31.

32. Denied except that Quirky admits that OXO is seeking a judicial declaration of its rights and obligations regarding the '243 Patent.

**PRAYER FOR RELIEF**

Quirky denies that OXO is entitled to any relief, including any relief as requested in counterclaim plaintiff's prayer for relief (A) – (F).

Dated: New York, New York  
July 21, 2014

Respectfully submitted,

**SOBEL & FELLER LLP**

  
By: \_\_\_\_\_

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**Counsel for Plaintiff Quirky Incorporated**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **ANSWER TO COUNTERCLAIMS** has been served on the following counsel of record, who have consented to receive service by e-mail, via the ECF-Pacer System (by email notification) on July 21, 2014:

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*/s/ Mitchell S. Feller* \_\_\_\_\_